



September 4, 2002

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2002-4961

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168116.

The Texas Youth Commission (the "commission") received a request for all records relating to a named individual in the commission's custody. The requestor is the individual's parent. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We begin by noting that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The submitted documents include completed reports. Therefore, as prescribed by section 552.022, the commission must release the completed reports unless they are excepted from disclosure under section 552.108 of the Government Code or are confidential under other law. Thus, we address your argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that a portion of the information is confidential under section 61.073 of the Human Resources Code. Section 61.073 provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Section 58.005(a) of the Family Code provides that "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court" may only be disclosed to only certain individuals under certain circumstances. Some of the submitted documents consist of records of the examination and treatment of the individual at issue. In addition, several of the documents you seek to withhold under section 61.073 consist of records of the psychiatric counseling and treatment of this individual.

We recognize that section 61.073 encompasses the submitted mental health records as records of examination and treatment in general. We note, however, that chapter 611 of the Health and Safety Code specifically addresses the public availability of mental health records. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Accordingly, we will address the mental health records at issue under chapter 611 of the Health and Safety Code. Section 611.002 of the Health & Safety Code provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Under section 611.001, a “professional” is (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. A portion of the submitted information consists of records of the identity, diagnosis, evaluation, or treatment of a patient that are confidential with respect to the general public and may only be disclosed as provided under sections 611.004 and 611.0045 of the Health and Safety Code.

Section 611.0045 states in pertinent part:

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient’s physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient’s physical, mental, or emotional health and shall include a copy of the written statement in the patient’s records. The statement must specify the portion of the record to which access is denied, the reason for the denial, and the duration of the denial.

....

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient’s behalf.

Section 611.004(a)(4) provides in turn:

(a) A professional may disclose confidential information only:

....

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient’s personal affairs.

In this case, the records at issue relate to a minor patient. The requestor is the patient's parent. The Texas Supreme Court addressed a parent's right of access to mental health records in *Abrams v. Jones*, 35 S.W.3d 620 (Tex. 2000). In that case, the Texas Supreme Court held that "when a parent seeks a child's mental health records 'on the patient's behalf,' [as provided in section 611.0045(f)], the parent steps into the shoes of the patient." *Abrams*, 35 S.W.3d at 626. The court determined that section 611.0045(f) affords third parties, including a parent, no greater rights of access to mental health records than those of the patient. *Id.* Thus, the court held, because section 611.0045(b) can limit a patient's own rights to the patient's records, section 611.0045(b) can also limit a parent's right to a patient's records when the parent stands in the patient's stead. *Id.* We therefore address the patient's right of access to the records under sections 611.0045(a) and (b).

Section 611.0045(a) gives a patient a right of access to the requested information, except as provided by other subsections of section 611.0045. *See* Open Records Decision No. 565 at 3 (1990) (upon written consent of subject, mental health records must be released). Section 611.0045(b) permits the professional to deny a patient access to any portion of that patient's mental health records if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health. Section 611.0045(c) establishes the procedure that a professional must follow when denying access to the patient's records. Here, you contend that release of the records at issue would have a detrimental effect on the patient. Based on your arguments and our review of the documents, we understand you to assert that a professional has determined that release of the records would be harmful to the patient's physical, mental, or emotional health. We therefore determine that the commission must withhold the records we have marked under section 552.101 in conjunction with section 611.0045(b) of the Health and Safety Code. The professional making the determination to deny access must also submit a written denial of access to the requestor as required by section 611.0045(c) of the Health and Safety Code.

Next, we note that several of the documents, which we have marked, consist of records of examination and treatment but are not mental health records. We address these documents under section 61.073 of the Human Resources Code. As noted, section 61.073 requires that except as provided by section 61.093(c), records of examination and treatment of an individual in the custody of the commission are not public and are available only as provided in section 58.005 of the Family Code and chapter 61 of the Code of Criminal Procedure. We find that the requestor is not a party to whom the information at issue may be disclosed pursuant to section 58.005 of the Family Code. We further find that section 61.093(c) of the Human Resources Code and chapter 61 of the Code of Criminal Procedure do not apply in this instance. Accordingly, we determine that the commission must withhold the examination and treatment records we have marked under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2)

the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We have marked the names of several juvenile offenders that must be withheld under section 552.101 and the doctrine of common-law privacy. Cf. Fam. Code § 58.007. We note, however, that the requestor has a special right of access to the named individual's identifying information pursuant to section 552.023 of the Government Code.²

In summary, the commission must withhold the marked mental health records pursuant to section 552.101 of the Government Code in conjunction with section 611.0045(b) of the Health and Safety Code. The examination and treatment records we have marked must be withheld under section 552.101 in conjunction with section 61.073 of the Human Resources Code. With the exception of the individual named in the request, the commission must withhold the names of juvenile offenders under section 552.101 and common-law privacy. The remainder of the information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

²Because some of the submitted information is confidential with respect to the general public, if the commission receives a future request for this information from an individual other than the requestor, the commission should again seek a decision from this office.

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 168116

Enc: Submitted documents

c: Ms. Kim Nicholson
c/o Texas Youth Commission
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(w/o enclosures)